

(2003) 07 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No. 16238 of 2000 and W.M.P. No's. 23530 and 23531 of 2000

R. Nallusamy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 MLJ 215

Hon'ble Judges : V.S. Sirpurkar, J;M. Thanikachalam, J

Bench : Division Bench

Advocate : R. Ramesh, for the Appellant; R. Santhanam, S.C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The Central Administrative Tribunal's order dismissing the original application filed by the petitioner herein is in

challenge. While disposing of the original application, the tribunal relied on the order passed by it earlier in a batch of original applications.

2. The dispute here pertains to seniority and proper placement in the seniority list. The petitioner had challenged orders pertaining to his fixation at

No. 7 in the seniority list of Grade IV Officers and claimed that he being the seniormost was bound to be given the supervisory duties. He had also

made a representation, which was rejected by the concerned authorities, requiring the petitioner to file the original application before the tribunal.

Needless to mention that the tribunal has also confirmed the stand taken by the department. The basic question here in this case is whether the

seniority of the petitioner was properly shown at Sl. No. 7, below the six persons

who were admittedly junior to him in Grade II and Grade III services.

3. The following facts will highlight the grievance and help understand the controversy. The petitioner joined as Telephone Operator in Grade I service on 24.8.1964. Then, as per the prevalent rules, while 2/3rd of such Grade I persons used to be promoted by seniority, 1/3rd could appear for the competitive examination and could get the promotion on the basis of their success in that examination. It is an admitted position that the petitioner appeared in that examination and succeeded. He was, therefore, promoted on 28.9.1977 as Grade II officer. The nomenclature of his post was Telephone Supervisor. It is also an admitted position that all the six persons shown above the petitioner vide order dated 9.11.1999, were not so promoted along with the petitioner and they remained to serve as Grade I officers. Afterwards, the petitioner on 24.12.1986 was promoted as Grade III officer on the basis of seniority. The nomenclature of his post was Senior Telephone Supervisor. After that, there was a Biennial Cadre Review, under which the petitioner was promoted as Grade IV officer in the post of Chief Telephone Supervisor on 5.5.1995. It is the petitioner's placement in the seniority of Chief Telephone Supervisors Grade IV, which is in question. This promotion was given with effect from 24.10.1990 in pursuance of the biennial cadre review.

3a. In fact, the Telecommunications Department had done an exercise of introducing one time bound promotion to all those persons who had suffered stagnation for 16 years. Such employees who were given that one time bound promotion were however necessarily to be shown as juniors to the persons who were promoted on the basis of merits. That is how the petitioner was senior in Grade II to the other persons who were not so promoted and were promoted with the aid of one time bound promotion scheme. The department then brought a scheme called Biennial Cadre Review scheme, under which the persons who had put in a total of 26 years of service were to be promoted on the basis of their length of service. This scheme was introduced on 24.10.1990. Initially, under this scheme those who had already been promoted to Grade III were protected, in the sense that, they were to be shown as seniors to the Others who were promoted on the basis of Biennial Cadre Review scheme

with effect from 1990. Under this scheme itself, 10% of Grade III officers were to be promoted to Grade IV and it is precisely because of this that

the petitioner, who was working as Grade III officer was promoted to Grade IV.

3b. Some persons approached the Delhi Bench of Central Administrative Tribunal vide O.A. No. 1455 of 1991. The Delhi Bench of the tribunal,

however, held that while comparing the inter se seniority of these Grade IV officers, the basis which would be taken into consideration would be

the seniority of such officers in the basic cadre of Grade I. This judgment was ultimately confirmed by the Supreme Court in "UNION OF INDIA

v. SMT. SANTOSH KAPOOR AND OTHERS"" in CIVIL APPEAL NO. 3201 OF 1993. Perhaps, taking that as a cue, the petitioner was

shown junior to six other persons in the cadre of Grade IV officers because those six officers were senior to the petitioner in the basic cadre of

Grade I. It only had happened that the petitioner, because of his merits, had passed the examination and was promoted to Grade II and it is an

admitted position that thereafter also throughout, upto Grade III, he remained as Senior Officer as compared to these six officers, who were

shown senior to him. The petitioner, therefore, contested this position by way of a representation, which however, came to be rejected by the

department on 4.4.2000, where the department reiterated that as per the judgment of the Delhi Bench of the Central Administrative Tribunal,

which was ultimately confirmed by the Supreme Court, the promotions would be governed on the basis of the seniority in the basic cadre, i.e.,

Grade I. The petitioner was hankering for the seniority for the simple reason that only the senior most officers were allowed to hold the supervisory

duties. Since the petitioner claimed to be the senior most and since the supervisory duties were denied to him, the petitioner had made that

representation. In effect, the department came to the conclusion that the petitioner was junior in Grade IV Post to those six persons, who were

admittedly senior to the petitioner in their basic cadre though they remained in the basic cadre while the petitioner came to be promoted on the

basis of his merits to Grade II and thereafter on the basis of seniority to Grade III, prior to all the six persons shown senior to him. Be that as it

may. The tribunal has ultimately come to the conclusion that the decision taken by the department was correct and the seniority in the Grade IV

posts would be governed by the seniority of the incumbents in the basic cadre i.e., Grade I.

4. Learned counsel for the petitioner brings to our attention that the exercise on the part of the department was wholly incorrect and also tends to

be arbitrary. The learned counsel very painstakingly points out that all through the career of the petitioner, he was held and considered to be senior.

The learned counsel also points out that the petitioner passed the examination for the 30% of the posts, which were reserved for the meritorious

candidates who could pass the examination meant for the same and that on the basis of his sheer merits, the petitioner had advanced from Grade I

to Grade II. He then points out that even in Grade II he was throughout senior to the other six persons who had not come to be promoted like the

petitioner on the basis of the competitive examination. He therefore points out that the petitioner was promoted to Grade III on the basis of his

seniority as back as in 1996, which promotion remained unquestioned. The learned counsel, therefore, argues that while he was further brought in

Grade IV by way of promotion under the Biennial Cadre Review scheme, he could not have been overnight shown to be junior to all those Others

who were throughout the service, juniors to him.

5. The tribunal has mainly relied on the earlier decision, which decision was placed before us by the learned counsel and we have carefully gone

through that decision. The learned counsel, however, pointed out further that the law laid down in that decision, which was confirmed by the

Supreme Court in *Union of India v. Santosh Kapoor and Others*, the decision cited *supra*, would not be applicable and the controversy stands

concluded by a decision of the Supreme Court in *Union of India v. Leelamma Jacob and Others* in C.A. No. 10692 of 1995 decided on

9.10.2002. We have gone through the decision. After going through the decision carefully, we are of the opinion that this writ petition would be

liable to be allowed as the question is squarely covered by this decision. The Supreme Court, after referring to the earlier history of the one time

bound promotion and the Biennial Cadre Review Scheme, has also referred to the earlier decision of the Central Administrative Tribunal (Delhi

Bench), as also to the earlier referred decision in *Union of India v. Santosh Kapoor and Others*. In the very beginning paragraph of its judgment,

the Apex Court has framed the question in the following terms:-

The question which has arisen for decision in these appeals is whether a scheme subsequently adopted by the Department could deprive the

contesting respondents of the seniority which they attained on being promoted in 1981.

Considering the facts in this case, we have no doubts that the judgment of the Supreme Court is applicable to the present situation on all fours. In

fact, short of invalidating the Biennial Cadre Review Scheme, the Supreme Court has practically rejected the whole scheme in the following

words:-

The reasoning of the tribunal, particularly its finding that the BCR Scheme in fact amounted to an amendment of the existing Rules by an

administrative order is unexceptionable. Logically speaking this should lead us to strike down the scheme altogether. However, given the fact that

the scheme has been in operation since 1990 and also that the contesting respondents are quite content with having their alternative prayer as

granted by the Tribunal we do not do so.

The Supreme Court came very heavily against the scheme and pointed out in the very next paragraph by observing in the following terms:-

In addition to the fact that the scheme is in contravention of the existing Rules, by virtue of the BCR scheme the contesting respondents' seniority

in Grade II was taken away. Those who had not been able to pass the examinations for promotion from Grade I to Grade II and who had

continued to serve in Grade I were allowed to leap-frog over the contesting respondents by the BCR scheme by being granted scales of pay in

respect of posts in Grade III. As a result, not only were the contesting respondents superseded without being considered for promotion to Grade

III at all when their juniors were considered, but their chances of being further promoted to Grade IV were effectively forestalled as promotion

from Grade III to Grade IV would be strictly on the basis of seniority presumably in the grade below.

The Supreme Court has ultimately come to the conclusion that such persons like the petitioner who took the examination successfully and were

promoted on that basis to the next grade could not be deprived of their seniority merely because the said Biennial Cadre Review scheme was

introduced.

6. As against this, Mr. Santhanam, learned Senior Central Government Standing Counsel tried to suggest that this case would not be applicable

because in the present matter before us what we are considering is the inter se seniority of the persons who have all been given the benefit of

Biennial Cadre Review scheme. Learned counsel says that the observations of the Supreme Court were in case of the persons who were to be

promoted from Grade II to Grade III and possibly from Grade III to Grade IV, but we are here concerned with the inter se seniority amongst all

the Grade IV officers and if the concerned persons including the petitioner chose to take the advantage of the scheme, then they cannot turn about

and claim the seniority in contravention of the scheme.

7. The argument, though attractive, is incorrect for the simple reason that it is the very basic premise in the service jurisprudence that when the

seniority is to be fixed it would be based on the seniority in the earlier cadre. By introduction of the scheme, the respondents in this case could not

have allowed the incumbents to have an unfair advantage of stealing the seniority over such persons who had already competed and proved

themselves and thus were promoted and had therefore become senior. The petitioner herein had proved himself by appearing for the examination,

whereas his other colleagues who are now being shown senior to him did not probably succeed in the examination or, at any rate, did not appear

for the examination, as the case may be. In that case, it would be now unfair to deprive the petitioner of the fruits of his labour and merit. This is

precisely what has been observed by the Supreme Court in the following words:-

Necessarily the consideration for promotion to the next grade should be from the grade immediately below. As a result of the BCR scheme

however the beneficiaries have been promoted from Grade I to Grade III and possibly grade IV without any consideration of their suitability in

terms of the rules or scheme.

These observations would apply with all their force to the present situation. It is an admitted position that the first six persons shown senior to the

petitioner have been directly inducted on the basis of the Biennial Cadre Review scheme merely on the basis of the length of service and merely

because they were senior to the petitioner in their basic cadre i.e., Grade I. They

are now being shown as senior officers in Grade IV, though it was the petitioner who went to Grade II first, who travelled to Grade III prior to those six persons. Under the circumstances, there will be no escape to suggest that since the petitioner accepted to be promoted under the Biennial Cadre Review Scheme, he should also accept to be junior to the persons, who were in fact junior to him in both Grade III and Grade II.

8. We are told that still, even after this judgment to which the Union of India was a party, the basis for adjudging the inter se seniority is the position in the basic cadre. That, in our opinion, would be clearly impermissible. The learned counsel for the Central Government tried to argue that all this has become academic because the petitioner has already been given the supervisory powers. That may be so. However, we cannot hold that the petitioner could be held as junior to the six persons, who were admittedly junior to him in Grade III and Grade II. The writ petition, therefore, succeeds. Consequently, W.M.P. Nos. 23530 and 23531 of 2000 are closed. The original application is liable to be allowed in the light of the observations we have made. The contrary order of the tribunal is set aside.

(CrI)